In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 280

KENNETH ADAMS TOLLIVER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the court of appeals, affirming the conviction without opinion (Pet. App. B), is not reported.

JURISDICTION

The judgment of the court of appeals was entered on June 20, 1963. The petition for a writ of certiorari was filed on July 17, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence supports the finding of guilty.

2. Whether petitioner was prejudiced by the denial of a motion for bill of particulars.

STATEMENT

After a trial before Judge Battisti in the United States District Court for the Northern District of Ohio, (a jury having been waived), petitioner was convicted of transporting a female in interstate commerce for the purpose of prostitution, in violation of 18 U.S.C. 2421.

The facts may be summarized as follows:

In September of 1960, Lydia Mistchenko, a 16-year-old prostitute, met petitioner in New York City following a long-distance telephone call from him. The purpose of the meeting, as described by Miss Mistchenko, was "to later go back to Ohio with him" (R. 2b).[1] In conversation with petitioner in New York, she told him that she was a prostitute (R. 7b). Petitioner talked to her about coming to Cleveland with him saying that he knew a lot of people and that she could make a lot of money (R. 2b).

Miss Mistchenko spent several nights with petitioner at two New York hotels where they had relations (R. 3b, 8b). Petitioner did not have enough money to make the trip to Ohio and had to wait until he received a money order from Cleveland (R. 4b, 8b). Upon receipt of the money order, Miss Mistchenko, petitioner, and one Williams, who had originally accompanied petitioner on the trip to New York, drove to Cleveland in an automobile apparently owned by Williams (R. 4b, 7b). Williams drove into New Jersey and petitioner drove the rest of the route, proceeding through New Jersey and Pennsylvania to Ohio (R. 5b, 9b). Miss Mistchenko testified

[1] References are to pages in Appellee's Appendix which has been filed with the Clerk of this Court.

further that, the evening they arrived in Cleveland, petitioner drove her downtown and told her to "work" the streets (R. 5b, 9b). For the next two months she worked as a prostitute in Cleveland, sometimes accepting customers referred by petitioner (R. 11b–13b), sometimes following petitioner's instructions as to working in certain bars (R. 5b, 14b). She turned over her earnings to petitioner (R. 6b, 10b, 11b–13b).

A Cleveland prostitute named Patricia Pressley, who described petitioner as "my pimp" (R. 17b), testified that in September of 1960 petitioner told her to work with Miss Mistchenko who was from New York (R. 15b, 17b). As a result, Miss Pressley accompanied Miss Mistchenko, introducing her to customers and soliciting men in bars (R. 16b, 17b).

Petitioner testified that he was in New York on vacation when he met Miss Mistchenko, and that, although he knew she was in business as a prostitute (R. 22b), he understood that she wanted to come to Cleveland on vacation in order to look around and see if things were as good in Cleveland as in New York (R. 23b). He said that she had not worked for him and that he had never proposed that she do so (R. 22b–23b).

Petitioner admitted that, although he had no job in 1960, he had income and that in November of that year had purchased a Cadillac automobile, making a down payment of $3,000. He stated that his income was derived from gambling and numbers and that he had not reported the money on his tax return (R. 23b–24b, 27b).

ARGUMENT

As shown in the Statement, *supra,* there is ample support for the finding that petitioner knowingly caused Miss Mistchenko to be transported from New York to Ohio to work for him as a prostitute. That she was a prostitute, that petitioner knew this in New York, and that she returned with him to Ohio are not disputed. As to the elements of petitioner's knowledge and intent, the judge accepted the testimony of Miss Mistchenko and rejected petitioner's "vacation" story. Her version was corroborated by the testimony of Miss Pressley—who, following petitioner's instructions, aided Miss Mistchenko in finding customers. There was abundant evidence that the illicit purpose of the trip was formulated prior to the departure from New York, and there is thus no conflict with *Mortensen* v. *United States,* 322 U.S. 369, and like cases. Petitioner asserts in his questions presented that the court denied his motion for a bill of particulars (Pet. p. 2). He does not argue—and the record does not show—that this ruling resulted in any undue surprise or other form of substantial prejudice at the trial; therefore petitioner can make no real complaint of the trial court's exercise of discretion in denying the motion. *Wong Tai* v. *United States,* 273 U.S. 77. Moreover, in light of petitioner's own testimony, it is evident that the information sought by the motion was either personally known to him or constituted evidentiary details in the government's case.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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